

## **REMARKS**

### **Overview of the Office Action**

Claims 1 and 2 have been rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,382,970 to Kiefl (“Kiefl”) in view of U.S. Patent No. 6,463,271 to Schroeder et al. (“Schroeder”). Claims 3 and 4 have been rejected under 35 U.S.C. §103(a) as unpatentable over Kiefl in view of U.S. Patent No. 6,173,158 to Hansen et al. (“Hansen”).

### **Claim Status**

Claims 1-4 remain pending.

### **Summary of subject matter disclosed in the specification**

The following descriptive details are based on the specification. They are provided only for the convenience of the Examiner as part of the discussion presented herein, and are not intended to argue limitations, which are unclaimed.

Disclosed is an apparatus for monitoring an audience member tuned to a broadcast program. The apparatus includes a portable audience monitoring unit adapted to be worn by the audience member. The monitoring unit includes means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program. The code signal corresponds to the broadcast program to which the audience member is tuned.

The word “broadcast” is described on page 11 of the present application as being generated by a signal transmission medium, such as over the airwaves, cable, satellite, etc. In describing the code as being combined with the programming signal to form the broadcast

signal, the claims explicitly require having the code broadcast together with the programming signal by the same transmission medium at the same time.

The portable monitoring unit further includes means for storing the detected code signal. The apparatus further includes means for outputting the detected code signal stored in the audience monitoring unit, and communication means for transmitting the outputted detected code signal to a central processing station, wherein the communication means communicates with Cellular Digital Packet Data (CDPD).

### **Descriptive summary of Kiefl**

Kiefl discloses a technique for monitoring and collecting data on, for example, the viewing habits of television viewers. A typical remote control 10 is used for switching among the available channels, and it is relied upon in this monitoring technique to provide a channel identifier signal. The channel identifier signal is stored in memory 28 and eventually transferred by cellular phone module 31 to a central location 30. Thus, the channel identifier signal is not part of the broadcast signal because it is not combined for transmission with the programming signal by the same signal transmission medium.

Personal data meters 16, 17 and 18 are provided to detect the output signal of remote control 10. These data meters are described as being “simply placed adjacent the television receiver 15 so that each may receive any infrared signal 12 emitted by remote control 10.” See col. 5, lines 44-47. Thus, the personal data meters are clearly and explicitly described as being not portable.

### **Descriptive summary of Schroeder**

Schroeder discloses a wireless voice and data communication system with a portable radio telephone handset that has a CDPD mode.

### **Descriptive summary of Hansen**

Hansen discloses a telecommunications network having a local service node provided with a two-way communicator 300 that includes an RF transceiver 310. The RF transceiver 310 can be a two way pager such as a REFLEX pager.

### **Claims 1 and 2 are allowable over Drake in view of Schroeder under 35 U.S.C. §103(a)**

Salient features of the present claimed invention include the following:

1. The apparatus includes a portable audience monitoring unit adapted to be worn by the audience member.
2. The monitoring unit includes means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program.

As regards above-listed feature no. 1, the Examiner contends that Kiefl discloses a code signal that forms the forms the broadcast signal, namely the signal provided by the channel detector. However, this is not an accurate characterization of the channel identifier signal derived from remote control 10. Remote control 10 is not the same signal transmission medium that broadcasts the programming signal, nor is the output of remote control 10 in any way combined with the programming signal. Consequently, Kiefl clearly lacks the presently claimed feature of “means for detecting a code signal that forms the broadcast signal in combination with a programming signal

used to perform the program.” Only a tortured and completely unsupportable reading of Kiefl can be responsible for any differing conclusion.

Moreover, Kiefl also clearly lacks the presently claimed feature of “a portable audience monitoring unit adapted to be worn by the audience member.” As explained above, the personal data meters of Kiefl are explicitly described as being stationary devices.

Schroeder fails to bridge the gap between claim 1 and Kiefl. There is nothing in Schroeder which even hints at the above-mentioned claimed features of the present invention that are missing in Kiefl.

In view of the foregoing, it is respectfully submitted that Kiefl and Schroeder, whether taken alone or in combination, do not teach or suggest the subject matter recited in independent claim 1. Accordingly, claim 1 is patentable thereover under 35 U.S.C. §103(a).

Independent claim 2 is patentable over Kiefl and Schroeder for reasons presented above with respect to claim 1.

**Claims 3 and 4 are allowable over Kiefl in view of Hansen under 35 U.S.C. §103(a)**

Claim 3 includes the features discussed above with respect to claim 1 for distinguishing the invention over Kiefl. Hansen fails to bridge the gap between claim 3 and Kiefl. There is nothing in Hansen which even hints at the above-mentioned claimed features of the present invention that are missing in Kiefl.

In view of the foregoing, it is respectfully submitted that Kiefl and Hansen, whether taken alone or in combination, do not teach or suggest the subject matter recited in independent claim. Accordingly, claim 3 is patentable thereover under 35 U.S.C. §103(a).

Independent claim 4 is patentable over Kiefl and Hansen for reasons presented above with respect to claim 3.

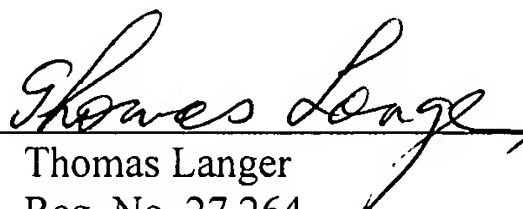
**Conclusion**

In view of the foregoing, reconsideration and withdrawal of all rejections, and allowance of all pending claims is respectfully solicited.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted,

COHEN PONTANI LIEBERMAN & PAVANE LLP

By   
Thomas Langer  
Reg. No. 27,264  
551 Fifth Avenue, Suite 1210  
New York, New York 10176  
(212) 687-2770

Dated: October 6, 2008